

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20577

IN THE MATTER OF THE CLAIM OF

DOROTHY KELLY, Individually
and as Administratrix of the
Estate of H. A. KANE, Deceased

Claim No. CU-1936

Decision No. CU -6766

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

H. S. and H. L. Wood
Attorneys at Law

AMENDED FINAL DECISION

On September 20, 1971 the Commission issued a Final Decision on this claim certifying losses to claimant, DOROTHY KELLY, individually in the amount of \$52,976.19 and in a like amount in her representative capacity. The claim was based on the loss of stock interests in Cuban enterprises and other personalty. The decision denied for failure of proof a portion of the claim based on the loss of 35.66 shares of stock of Tractores. Claimant had asserted the ownership of 87.66 shares of Tractores but the evidence only supported the ownership of 52 shares. The decision became final on September 20, 1971.

Subsequently satisfactory evidence was received in support of this portion of the claim, and accordingly the Commission now finds that claimant, DOROTHY KELLY, and her late husband owned 87.66 shares of stock of Tractores.

In view of the foregoing the Commission finds that claimant, DOROTHY KELLY and her late husband suffered a loss in the amount of \$119,289.66 for their interest in 87.66 shares of Tractores.

Recapitulation

The total losses in this claim are now summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Amount</u>	
			<u>Dorothy Kelly</u>
		<u>Individually</u>	<u>As Administratrix</u>
Atesa	October 24, 1960	\$ 4,311.49	\$ 4,311.49
Tractores	October 24, 1960	59,644.83	59,644.83
Furnishings and Auto	December 6, 1961	7,700.00	7,700.00
Money Deposited	August 9, 1961	<u>5,583.33</u>	<u>5,583.33</u>
		\$77,239.65	\$77,239.65

The Commission reaffirms the inclusion of interest and in the instant case it is so ordered as follows:

	<u>FROM</u>	<u>ON</u>
DOROTHY KELLY	October 24, 1960	\$63,956.32
	August 9, 1961	5,583.33
	December 6, 1961	<u>7,700.00</u>
		\$77,239.65
DOROTHY KELLY	October 24, 1960	\$63,956.32
As Administratrix	August 9, 1961	5,583.33
	December 6, 1961	<u>7,700.00</u>
		\$77,239.65

The Certifications of Loss in the Proposed and Final Decisions are set aside, the following Certifications of Loss will be entered and in all other respects the Proposed and Final Decisions are affirmed.


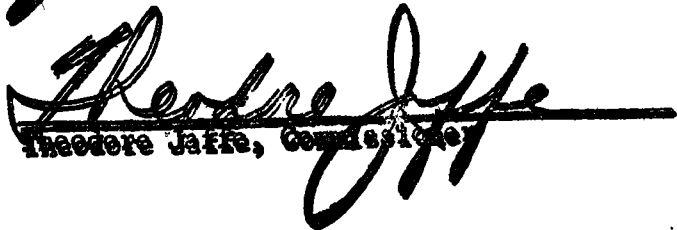
CERTIFICATIONS OF LOSS

The Commission certifies that DOROTHY KELLY, Individually, suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seventy-Seven Thousand Two Hundred Thirty-Nine Dollars and Sixty-Five Cents (\$77,239.65) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that DOROTHY KELLY as Administratrix of the Estate of H. A. KANE, Deceased, suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seventy-Seven Thousand Two Hundred Thirty-Nine Dollars and Sixty-Five Cents (\$77,239.65) with interest at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C., and
entered as the Amended Final
Decision of the Commission

OCT 20 1971


John S. Garlock, Chairman

Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579**

IN THE MATTER OF THE CLAIM OF

DOROTHY KELLY, Individually
and as Administratrix of the
Estate of H. A. KANE, Deceased

Claim No. CU -1936

Decision No. CU- 6766

**Under the International Claims Settlement
Act of 1949, as amended**

Counsel for claimant:

H. S. and H. L. Wood
Attorneys at Law

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by H. A. KANE and DOROTHY KANE for \$286,278.72 based upon the asserted ownership and loss of stock interests in Cuban enterprises and other personalty.

The decedent, H. A. KANE had been a national of the United States since 1920. He died testate on March 8, 1970. Upon the application of the named Executor, Miami Beach First National Bank, decedent's widow, DOROTHY SHOPE KANE, was appointed Administratrix Cum Testamento Annexo. Subsequently, DOROTHY SHOPE KANE married Charles William Kelly. Accordingly DOROTHY KELLY is substituted in her individual and representative capacity as claimants herein. DOROTHY KELLY has been a United States national at the requisite times.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government

of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg. 45 C.F.R. §531.6(d)(1970).)

This claim is based on the loss of stock interests in Agencia de Tractores y Equipos, S.A. (Tractores), Compania de Perforaciones Atesa, S.A. (Atesa), and Compania Petrolera Castillo de Morro, S.A. (Petrolera); household furnishings and car; and \$11,000 in a depository in Cuba.

Based on the evidence of record further discussed below, the Commission finds that DOROTHY KELLY and her former spouse, H. A. KANE, pursuant to the Community Property Law of Cuba, jointly owned certain shares of stock in the three Cuban companies subject of this claim, the household furnishings and car, and a deposit of money.

Atesa

On the basis of the entire record including a report from abroad, a stock certificate in Atesa representing 10,736 shares issued to decedent H. A. KANE and a copy of a formal agreement entered into on December 19, 1966 wherein H. A. KANE explained that these shares were in fact owned by the three brothers, himself, Terry Kane and Lewis T. Kane and their wives, the Commission finds that claimant DOROTHY KELLY and her late husband owned 3,578 shares of Atesa.

In our decision entitled the Claim of Harry Wassall, Claim No. CU-0243 which we incorporate herein by reference), we held that the properties owned

by the Company were nationalized or otherwise taken by the Government of Cuba on October 24, 1960, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per share of \$2.41.

In view of the foregoing the Commission finds that claimant, DOROTHY KELLY and her late husband each suffered a loss of \$4,311.49 for their respective interests in the 3,578 shares in Atesa.

Tractores

On the basis of the entire record including a report from abroad, and stock certificates issued to decedent H. A. KANE on August 30, 1960 evidencing ownership of 52 shares; and an affidavit by H. A. KANE, dated February 22, 1965, that he owned 52 shares of Tractores, the Commission finds that claimant, DOROTHY KELLY and her late husband owned 52 shares of Tractores. In this regard the aforementioned agreement of December 19, 1966 indicated that they owned 87.66 shares but they have not established their ownership of an additional 35.66 shares.

Based on the evidence of record the Commission finds that Tractores was listed as nationalized by the Cuban Government in Resolution 3 of October 24, 1960 and the Commission finds that it was taken by the Government of Cuba on that date.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the

evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The record includes a balance sheet and other financial statements in the Spanish language for Tractores for the year ending June 30, 1930 prepared by a public accountant and sent to H. A. KANE, on October 3, 1960.

The balance sheet reflects that Tractores had 300 shares outstanding of \$1,000 par value each and had a net worth of \$408,246.62. The record also includes a letter by H. A. KANE, to the American Embassy dated October 6, 1960 in which he filed a statement for the record, and exhibits including the aforementioned balance sheet which he stated showed a net worth of \$408,246.62.

Based on all the evidence the Commission finds that the value of Tractores as reflected in the balance sheet as of June 30, 1960 is the most appropriate basis for valuation. Accordingly, each of the 300 shares had a value of \$1,360.8221, and the Commission finds that claimant, DOROTHY KELLY and her late husband, as holders of 52 shares, each suffered a loss in the amount of \$35,381.37 as the result of the loss of their interest in these 52 shares.

Petrolera

The record includes copies of five bearer share certificates in Petrolera representing a total of 40,000 shares of 25 cents par value each, the authorized capital. The record includes a report from abroad and the aforementioned agreement of December 19, 1966 wherein H. A. KANE, explained that these shares were in fact owned by the three brothers, himself, Terry Kane and Lewis T. Kane, and their wives.

The record, however, contains no evidence regarding the nationalization or other taking of Petrolera and no balance sheet or other financial statements from which the value of Petrolera can be ascertained. Accordingly the Commission is constrained to and does deny this portion of the claim for lack of proof.

Household Furnishings and Automobile

Claim is asserted for the loss of household furnishings and a 1959 Oldsmobile. Based on the evidence of record it appears that claimant,

DOROTHY KELLY and her late husband left Cuba subsequent to October 6, 1960.

On December 6, 1961, the Cuban Government published its Law 989 which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country .

Based on the entire record, the Commission finds that claimant DOROTHY KELLY and her late husband owned certain household furnishings and an automobile in Cuba, and that these were taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989.

The record includes an affidavit by H. A. KANE, in which he listed the household furnishings and an automobile including their estimated values. ' On the basis of the evidence of record the Commission finds that the total value of \$15,400.00 asserted for this personalty is fair and reasonable, and concludes that claimant, DOROTHY KELLY and her late husband each, suffered a loss of \$7,700.00 for their interest therein.

Money Deposited

Based on the evidence of record and evidence available to the Commission, the Commission finds that the late H. A. KANE deposited 33,500 pesos with the American Embassy in Habana in 1960. Subsequently, upon the closing of the American Embassy, this and other funds deposited with the Embassy were turned over to a private depository which surrendered those funds for exchange under Law 963, but received nothing in return. The Law 963 created "special accounts" for this type of fund.

The Commission finds that the funds deposited were taken by the Government of Cuba on August 9, 1961 pursuant to the provisions of Law 964.

(See Claim of Dorothy G. O'Kieffe, Claim No. CU-1242.)

Based on the entire record including the aforementioned agreement of December 19, 1966 the Commission finds that claimant, DOROTHY KELLY and her late husband owned a third of this fund and concludes that they each suffered a loss of \$5,583.33 (the peso being on a par with the United States dollar) for their one-sixth interests in the fund of 33,500 pesos.

Recapitulation

The losses are summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Amount</u>	
<u>DOROTHY KELLY</u>			
<u>Individually As Administratrix</u>			
Atesa	October 24, 1960	\$ 4,311.49	\$ 4,311.49
Tractores	October 24, 1960	35,381.37	35,381.37
Furnishings and Automobile	December 6, 1961	7,700.00	7,700.00
Money Deposited	August 9, 1961	5,583.33	5,583.33
		<u>\$52,976.19</u>	<u>\$52,976.19</u>

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered as follows:

	<u>FROM</u>	<u>ON</u>
DOROTHY KELLY	October 24, 1960	\$39,692.86
	August 9, 1961	5,583.33
	December 6, 1961	<u>7,700.00</u>
		<u>\$52,976.19</u>
DOROTHY KELLY		
As Administratrix	October 24, 1960	\$39,692.86
	August 9, 1961	5,583.33
	December 6, 1961	<u>7,700.00</u>
		<u>\$52,976.19</u>

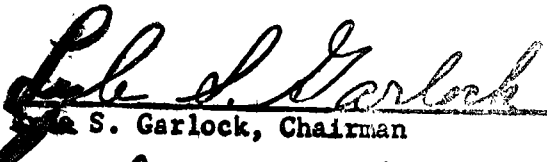
CERTIFICATION OF LOSS

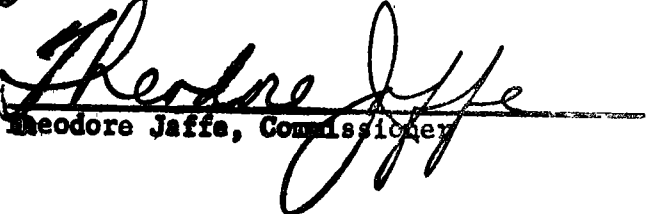
The Commission certifies that DOROTHY KELLY, Individually, suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fifty-Two Thousand Nine Hundred Seventy-Six Dollars and Nineteen Cents (\$52,976.19) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that DOROTHY KELLY as Administratrix of the Estate of H. A. KANE, Deceased suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fifty-Two Thousand Nine Hundred Seventy-Six Dollars and Nineteen Cents (\$52,976.19) with interest at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

AUG 18 1971


S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended (1970).)